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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,699	01/21/2004	Thomas M. Conway	6570/91346	3354
7590	03/08/2006			EXAMINER
Mitchell J. Weinstein Welsh & Katz, Ltd. 22nd Floor 120 S. Riverside Drive Chicago, IL 60606				NEWTON, JARED W
			ART UNIT	PAPER NUMBER
			3634	
			DATE MAILED: 03/08/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/761,699	CONWAY, THOMAS M.
	Examiner Jared W. Newton	Art Unit 3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) 1 and 12 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 January 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings, particularly Figures 1 and 2, are dark and vague, and do not show the details of the claimed subject matter. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

- “[To]] The upper portion...” (Paragraph 11, Ln.3)
- “At the top, the [[20]] net 20 is threaded...” (Paragraph 28, Ln. 6)
- “An upper mount 32 is formed as a U-shaped element having upper leg portions 34...” (Paragraph 30, Ln. 1-2)

Appropriate correction is required, wherein it is suggested that subject matter in double brackets [[]] should be canceled, and underlined subject matter should be added.

Claim Objections

Claim 12 is objected to because of the following informalities:

- “...uprights mount to a rear surface...” (Ln. 2)

Appropriate correction is required, wherein it is suggested that subject matter in double brackets [[]] should be canceled, and underlined subject matter should be added.

Claim 1 recites the limitation "...to the upper elements..." in Line 13. There is insufficient antecedent basis for this limitation in the claim, as the claim only initially cites a singular upper element in Line 8.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1, 2, and 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to the claims, the positive recitations below render the above claims indefinite:

- “...connecting each upright to a respective post;” (Claim 1, Ln. 7-8);
- “...the rack includes an upper rack beam and wherein the net is removably mounted...” (Claim 2, Ln. 2-3)

- "...the upright mount to a rear surface of the rack posts..." (Claim 12, Ln. 2).

In particular, applicant functionally sets forth the rack and posts in lines 1-2 of claim 1 through the recitation "...for mounting to a rack having a pair of spaced apart upstanding posts..." and then applicant improperly seeks to link the functionally recited structure of the rack and posts to the positive structure of the safety net system. Thus, the metes and bounds of the claims cannot be properly ascertained since one would not know whether a rack and posts are being positively claimed. It appears that it is applicant's intention to positively claim the subcombination of safety net system, and thus the claims have been treated accordingly.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Insomuch as understood in view of the 35 USC 112 2nd Paragraph rejections above, claims 1-5, 7, 8, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,698,604 to Denny et al.

Denny et al. disclose a net apparatus for mounting to a rack 100 having a pair of spaced apart upstanding posts 120, the upstanding posts having open tops (see FIG. 1) and holes 122 formed in side walls thereof, said apparatus comprising: a pair of spaced apart uprights 420; upper and lower mounts 140 operably connecting each upright 420 to a respective rack post 120 (see FIG. 1); an upper element 240 extending between and mounted to the uprights at about an upper portion of the uprights; a net 200 extending between and mounted to the uprights and mounted to the upper element, wherein the net is removably mounted to the uprights and to the upper elements, and wherein the uprights are variably mountable to the rack posts to vary a height of the net above the posts (see FIG. 1).

In regard to claim 2, Denny et al. further disclose the safety net system in accordance with claim 1 wherein the rack includes front and rear upper rack beams 129 and wherein the net is removably mountable to the front upper rack beam via carabiner 226 (see FIG. 8).

In regard to claim 3, Denny et al. further disclose the safety net system in accordance with claim 1, further comprising said upper element being rigid, wherein a cable can be defined as a rigid element when pulled tight.

In regard to claims 4 and 5, Denny et al. further disclose the safety net system in accordance with claim 1, said system further comprising a plurality of closable loop carabiners 226 for mounting the net 200 to the uprights 420 (see FIG. 1) (see Column 2, Ln. 51-53).

In regard to claim 7, Denny et al. further disclose the safety net system in accordance with claim 1 wherein the lower mount 140 is formed as a pair of legs mounted to the uprights 420 and mountable to the posts 120 (see FIG. 1).

In regard to claim 8, Denny et al. further disclose the safety net system in accordance with claim 1 wherein a lower portion of the upright, at a rear side thereof is open. Denny et al. do not explicitly disclose an open bottom portion; however, Denny et al. do disclose said uprights 420 having a generally C-shaped cross-section, inherently disclosing an open lower portion.

In regard to claim 9, Denny et al. disclose an apparatus comprising all of the limitations of claims 1 and 8 and further disclose an upper portion of said uprights at the rear side as closed by brackets 494 (see FIGS. 5 and 6).

In regard to claim 12, Denny et al. further disclose the safety net system in accordance with claim 1 wherein the uprights 420 mount to a rear surface of the rack posts, wherein the surface facing a viewer of Figure 1 is defined as the rear surface. Further, Denny et al. show identical front and rear surfaces of said rack, and therefore said net support apparatus is capable of being mounted to either surface of said rack, regardless of whether or not said surface is considered a front or rear surface.

Insomuch as understood in view of the 35 USC 112 2nd Paragraph rejections above, claims 1, 4-6, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,619,490 to Calleja.

In regard to claim 1, Calleja discloses a netting system for mounting to a rack having a pair of spaced apart upstanding posts 516, the upstanding posts having open tops (see FIG. 5) and holes formed in side walls thereof, said apparatus comprising: a pair of spaced apart uprights 502; upper 510,512 and lower 514 mounts 140 operably connecting each upright 502 to a respective rack post 516 (see FIG. 5); an upper element 412 extending between and mounted to the uprights at about an upper portion of the uprights; a net 410 extending between and mounted to the uprights and mounted to the upper element, wherein the net is removably mounted to the uprights and to the upper elements, and wherein the uprights are variably mountable to the rack posts to vary a height of the net above the posts (see FIG. 1).

In regard to claims 4 and 5, Calleja further discloses the safety net system in accordance with claim 1, said system further comprising a plurality of closable loop carabiners 608-613 for mounting the net to the uprights (see FIG. 6a) (see Abstract, Ln. 7).

In regard to claim 6, Calleja further discloses the safety net system in accordance with claim 1 wherein the upper mount is formed as a U-shaped element having legs 510,512 and a central connecting region, defined as the front face of upright 502, said mount including fingers depending from legs and transverse to the central connecting portion to define notches therein (see FIG. 5).

In regard to claim 12, Calleja further discloses the safety net system in accordance with claim 1 wherein the uprights 502 mount to a rear surface of the rack posts, wherein the surface facing a viewer of Figure 5 is defined as the rear surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over '621 to Denny et al. as applied to claims 1-5, 7, 8, and 12 above, and further in view of '490 to Calleja.

In regard to claim 9, Denny et al. disclose an apparatus comprising all of the limitations of claims 1 and 8 as set forth above, but do not disclose the upper portions of said uprights at the rear side as closed. Calleja discloses the netting system as set forth above, set system comprising uprights having closed upper portions. The Denny et al. and Calleja references are analogous art because they are from the same field of endeavor—rack and netting systems—and classified in the same US class/subclass. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the closed rear upper portions of the uprights as disclosed by Calleja on the rear of the upper portions of the uprights as disclosed by Denny et al. The motivation would have been to provide a closed upper section in order to protect the portions of the carabiner attachments disposed between the legs of the uprights.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over '621 to Denny et al. as applied to claims 1-5, 7, 8, and 12 above, and further in view of US Patent Application Publication No. US 2004/0129660 to Kita.

Denny et al. disclose the apparatus comprising the limitations of claim 1 as set forth above, but does not disclose said net as wrapped around the upper element to maintain the net in tension. Kita discloses a rack comprising retractable screens, wherein said screen 1 operates in a first rolled position around an upper element in storage case 22, and a second extended position covering the face of said rack (see FIG. 2). The Denny et al. and Kita references are analogous art because they are from the same field of endeavor—rack and covering systems—and classified in the same US class/subclass. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the upper screen retracting element as disclosed by Kita in place of the upper element as disclosed by Denny et al. The motivation would have been to provide the rack as set forth by Denny et al. with a simple means of retracting the net when it is desired to access items stored on said rack behind said net. In operation, a user would simply need to release the lower and side carabiner attachments from the net, and then engage the motor of the retracting element in order to roll the net to a stored position, allowing articles to be stored on or removed from the rack. The retracting element would be an obvious improvement for allowing the net to be retracted and adjusted to various heights.

In regard to claim 11, Denny et al. disclose the net as maintained in tension between the uprights via straps 216 and buckles 220 (see FIG. 2).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure by showing inventions related to racks and netting/screens:

- US Patent No. 4,981,225 to Cole
- US Patent No. 5,984,121 to Cole
- US Patent No. 6,585,122 to Calleja
- US Patent No. 6,698,604 to Denny et al.
- US Patent No. 6,722,512 to Scully
- US Patent No. 6,837,388 to Calleja
- US Patent No. 6,938,785 to Denny et al.
- US Patent App. Pub. No. 2005/0000928 to Calleja
- US Patent App. Pub. No. 2005/0263470 to Horneland

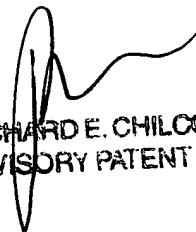
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JWN
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